IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5716 OF 2007

Usman Ibrahim Kazi & Anr..... ....Petitioners
V/s
Janab Dr.Sagir Munirkhan Sarguroh & Ors..... .....Respondents.

Mr.V.Y.Jadhav, Adv. For the petitioners.

Mr.Sandesh D. Patil, Adv. For respondent No.1.

CORAM: A.P.DESHPANDE, J.
8/8/07

PC:

Rule. Rule made returnable forthwith.

Taken up for final hearing by consent of both the parties.

The respondent No.6 Muslim Education Society is a public trust registered under the provisions of Bombay Public Trusts Act. There are two groups trying to gain control of the administration of the Trust. The present petitioners were permitted by the District Court to manage the day-to-day affairs of the Trust and the school administered by it and to act as care takers. Aggrieved by the said order the present respondent No.1 filed a writ petition in this Court bearing writ petition No.4637/07 and therein prayed for orders for holding of election so that a democratically elected body is in position to assume charge of administration of the Trust. By an interim order dated 29.6.07 passed in the above referred writ petition this Court directed the Assistant Charity Commissioner to appoint appropriate officer to supervise election of the Board of Trustees/Managing Committee of the Trust in question. A further direction was issued that the election be held in a period of three months from the date of the order. Till the holding of election care taker

body was directed not to take any policy decision.

2. Acting in pursuance of the said order passed by this Court dated 29.6.07 the present petitioner who was respondent in the earlier petition moved an application before the Assistant Charity Commissioner informing that with a view to hold impartial election the present petitioners have appointed one Shivaji Rajaram Shivgan as the Election Officer and sought appointment of an officer from the office of the Assistant Charity Commissioner to be appointed as supervisor. The interim order which issued direction for holding election had not specifically directed the respondents in the said petition to conduct the election by preparing an election programme and by appointing an election officer. Nonetheless, the present petitioner (respondent in the earlier petition) prepared election programme and after appointing an election officer sought appointment of supervisor from the office of the Assistant Charity Commissioner. Without issuing notice to other group viz. the respondents in the present petition an order came to be passed appointing one N.D.Deshpande to comply with the order passed by the High Court. The order does not go to issue any other direction. When the respondents learned about the election programme and conducting of election by the present petitioner the respondents objected to holding of election by present petitioner. The respondents prayed that the election be permitted to be held by respondents. The respondents as well prepared election programme and appointed election officer and moved the Assistant Charity Commissioner seeking permission to appoint supervisor. The Assistant Charity Commissioner has allowed the said application moved by the respondents without setting aside the election programme published by the present petitioner and without pronouncing as to whether programme which was under way conducted by the petitioner is set aside or otherwise. In this fact situation the petitioner

claims that they have gone ahead with holding of the election despite the impugned order passed by the Assistant Charity Commissioner dated 1.8.07. Whereas the respondents claim that according to the order passed by the Assistant Charity Commissioner which permits holding of election by respondents according to its own election programme the election process is on. It is obvious that this Court did not envisage holding of election by either of the groups as the object was to have election conducted by an impartial person. Be it as it may, the petitioner has sought orders for conducting of election by their group by moving the Assistant Charity Commissioner and at a later point of time similar orders have been obtained by the respondent. Both the learned counsel do not dispute that by the impugned order the election process of election conducted by the petitioner has not been set aside. However it goes without saying that neither this Court no the Assistant Charity Commissioner could be said to have permitted holding of election by both the rival groups by seeking appointment of supervisor by the Assistant Charity Commissioner. The very purpose of holding impartial election sought to be achieved by this Court has been defeated by the parties to the petition and by the impugned order passed by the Assistant Charity Commissioner dated 1.8.07. With a view to seek election of the Managing Committee of the Trust at the hands of an impartial authority I set aside the process of election conducted by the petitioner so also conducted by the respondents. It is hereby declared that the election programme published by the petitioner so also respondents stands quashed and set aside. The appointment of respective election officers by both the groups also stands quashed and set aside. The orders passed by the Assistant Charity Commissioner dated 17.7.07, 21.7.07 and 1.8.07 are all quashed and set aside. I direct the Assistant Charity Commissioner to appoint an officer from his office as an Election Officer

for conducting election of the Managing Committee of Respondent No.6-Trust. The Election Officer so appointed by the Assistant Charity Commissioner shall conduct election in accordance with law within a period of three months from today. After holding the election the election officer shall declare result of election and hand over charge of the Trust to newly elected body. I make it clear that till the result of the election is declared by the election officer no application moved by any of the parties which would go to obstruct election process shall not be entertained. Rule made absolute in above terms.

8.8.07